

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES A. EDWARDS,

Plaintiff,

vs.

D. SMITH, et al.,

Defendants.

1:20-cv-01822-GSA-PC

**ORDER WITHDRAWING FINDINGS
AND RECOMMENDATIONS ISSUED
ON APRIL 4, 2023**

(ECF No. 18.)

I. BACKGROUND

Charles A. Edwards (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. On December 28, 2020, Plaintiff filed the Complaint commencing this action. (ECF No. 1.)

On March 25, 2022, the Court dismissed the Complaint for failure to state a claim, with leave to amend. (ECF No. 9.) On April 11, 2022, Plaintiff filed the First Amended Complaint. (ECF No. 10.) On April 13, 2022, Plaintiff lodged a First Amended Complaint which was stricken by the Court for attempting to add information piecemeal to the complaint in violation of Local Rule 220, and Plaintiff was granted leave to file a Second Amended Complaint complete in itself. (ECF No. 13.) On June 17, 2022, Plaintiff filed the Second Amended Complaint, (ECF No. 14), which was stricken by the Court for lack of Plaintiff’s signature, (ECF No. 15). On July 1, 2022, Plaintiff filed the Second Amended Complaint, bearing his signature. (ECF No. 16.)

The Second Amended Complaint names only one defendant, Correctional Officer Don Smith, and brings a claim for use of excessive force. Plaintiff also brings a claim in the Second Amended Complaint against “staff” for failing to decontaminate him from pepper spray.

On April 4, 2023, the Court issued findings and recommendations, recommending that this case proceed with the Second Amended Complaint against only Defendant Don Smith for use of excessive force, and that all other claims be dismissed for Plaintiff's failure to state a claim. (ECF No. 18.) On May 1, 2023, Plaintiff filed objections to the findings and recommendations. (ECF No. 19.) In the objections, Plaintiff informed the Court that the defendant who failed to decontaminate Plaintiff is named C/O Lira.

On May 8, 2023, the Court issued an order informing Plaintiff that he cannot add a defendant's name to his Second Amended Complaint by informing the Court of the defendant's name in his objections to the findings and recommendations. Local Rule 220. (ECF No. 20.) In the order, Plaintiff was granted leave to either (1) file a Third Amended Complaint to add defendant C/O Lira's name, or in the alternative, (2) to notify the Court that he wishes to proceed with the Second Amended Complaint against only Defendant Don Smith for use of excessive force. (ECF No. 20.) On June 7, 2023, Plaintiff filed the Third Amended Complaint. (ECF No. 21.)

II. CONCLUSION AND ORDER

In light of the fact that Plaintiff has filed the Third Amended Complaint, the Court shall withdraw the findings and recommendations issued on April 4, 2023.

Accordingly, **IT IS HEREBY ORDERED** that:

1. The findings and recommendations issued on April 4, 2023, are **WITHDRAWN**;
and
2. The Court shall screen the Third Amended Complaint in due course.

IT IS SO ORDERED.

Dated: **June 16, 2023**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE